

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO, *ex rel.*

State Engineer

Plaintiff,

v.

ROMAN ARAGON, *et al.*,

Defendants.

69cv07941-KWR/KK

RIO CHAMA STREAM SYSTEM

Section 1: Main Stem

Acequia de Chamita

Acequia de Hernandez

Acequia de los Salazares

MOTION BY STATE OF NEW MEXICO FOR COURT TO RULE ON DOC. NO. 10865

COMES NOW Plaintiff State of New Mexico, *ex rel.*, State Engineer (“State”) and respectfully moves the Court to rule on Plaintiff’s *Renewed Motion by the State of New Mexico to Adopt, in Part, to Modify and Objections to Special Master’s Report on Priorities for Three Acequias* (“Renewed Motion,” Doc. No. 10865, filed 10/08/2012). In support of this motion, Plaintiff states the following:

1. Special Master L. Vickie Gabin filed her *Special Master’s Report on Priorities for Three Acequias* (“Report”) on December 16, 2009 (Doc. 9546) and recommended that the Court find that the first use of water under the Acequia de Chamita, Acequia de Hernandez, and Acequia de los Salazares was 1600. On February 20, 2010, the State filed its motion to adopt the recommendation of the priority date of 1600 for water rights under the three acequias, but also objected to portions of the *Report* and requested that the *Report* be modified in certain respects. *State of New Mexico’s Motion to Adopt, In Part, to Modify and Objections to Special Master’s*

Report on Priorities for Three Acequias (Doc. 9597). Through counsel, the three acequias also requested that the Court adopt the *Report* and recommended priority date of 1600. *Motion to Adopt Special Master's Report and Recommendations on Priority Date for three Acequias* (Doc. 9556, filed 1/7/2010). Numerous *pro se* parties, including Defendant David Ortiz, filed objections to the *Report* requesting a hearing to prove an earlier claimed priority date of August 11, 1598, for their water rights under the Acequia de Chamita. *See Memorandum Opinion and Order* (Doc. 9720, filed 5/21/2010).

2. The State opposed Mr. Ortiz's objection and request to provide additional evidence on the grounds that Mr. Ortiz did not timely file an objection to the *Notice and Order to Show Cause*, as was required by the *Pretrial Order on Mainstream Section Priority Dates*, (Doc. 5348, filed 3/25/1996), which governed the proceedings. *Motion to Limit Consideration of Objections to Special Master's Report Filed December 16, 2009 to Parties Subject to the Pretrial Order on Mainstream Priorities Filed March 25, 1996*, Doc. 9606, filed 2/25/2010.

3. In response to the State's motion, the Court limited consideration of objections for all but five owners, who the Court held had not properly been served with the *Notice and Order to Show Cause*. Doc. 9979, filed 11/16/2010. The Court ordered the Special Master to file a notice identifying the subfile owners who were not served, *id.*, and ordered the State to initiate show cause proceedings for the owners of each of the subfiles, providing them the opportunity to object to the proposed priority date of 1600, *Order* (Doc. 10537, filed 8/25/2011).

4. In accordance with the Court's *Order*, the State served the owners the Special Master determined had not properly been served. *Certificate of Service* (Doc. 10671, filed 12/19/2011). Only David and Cecilia Ortiz, owners of the tract associated with Subfile No. 267,

timely filed objections to the priority date of 1600. *See Renewed Motion by the State of New Mexico to Adopt, in Part, to Modify and Objections to Special Master's Report on Priorities for Three Acequias* (Doc. 10865, filed 10/8/2012).

5. The State filed its *Renewed Motion* on October 8, 2012, asking the Court to adopt the priority date of 1600 for all “water rights appurtenant to tracts of land under the Acequias de Chamita, Hernandez, and Salazares other than the lands owned by David Ortiz and Cecilia Ortiz under the Acequia de Chamita.” *Renewed Motion*, at pg. 4. To date, the Court has not ruled on this motion.

6. On February 12-12, 2013, a magistrate judge held an evidentiary hearing regarding the priority date of the Ortizes’ water rights under the Acequia de Chamita. *Magistrate Judge's Findings and Recommended Disposition* (Doc. 10939, filed 8/2/2013). The magistrate judge found that the Ortizes failed to offer clear and convincing evidence supporting a pre-1600 priority date and recommended that the Court adopt 1600 as the priority date for the Ortizes’ water right. *Id.* at 22–23.

7. On December 16, 2013, the Court filed its *Order Adopting Magistrate Judge's Findings and Recommended Disposition*, Doc. 10981, resolving the final objection to the 1600 priority date for the three acéquias.

8. Now that all objections to the priority date of 1600 are resolved, it is proper for the Court to enter its order adopting the recommended priority date.

WHEREFORE, Plaintiff State of New Mexico respectfully requests the Court rule on Plaintiff's *Renewed Motion by the State of New Mexico to Adopt, in Part, to Modify and Objections to Special Master's Report on Priorities for Three Acequias* (Doc. No. 10865, filed

10/08/2012), and enter its Order adopting, in part, and modifying, in part, the *Special Master's Report on Priorities for Three Acequias*, in particular making a final determination that the priority date for the Acequias de Chamita, Hernandez, and Los Salazares is 1600.

DATED: February 1, 2023

Respectfully submitted,

/s/ Patricia Estrella

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the first day of February, 2023, I filed the foregoing electronically through the CM/ECF system, which caused the parties on the electronic service list, as more fully set forth in the Notice of Electronic Filing, to be served by electronic mail.

/s/ Patricia Estrella

Patricia Estrella